

IN THE SUPREME COURT OF THE STATE OF ALASKA

RESOURCE DEVELOPMENT COUNCIL )  
FOR ALASKA, INC.; ALASKA TRUCKING )  
ASSOCIATION, INC.; ALASKA MINERS )  
ASSOCIATION, INC.; ASSOCIATED )  
GENERAL CONTRACTORS OF ALASKA; )  
ALASKA CHAMBER; ALASKA SUPPORT ) Supreme Court Nos. S-17834/S-17843  
INDUSTRY ALLIANCE, )  
)  
Appellants and Cross-Appellees, )  
v. )  
KEVIN MEYER, in his official capacity )  
as Lt. Governor of the State of Alaska; )  
GAIL FENUMIAI, in her capacity as Director )  
of the Alaska Division of Elections; the )  
STATE OF ALASKA, DIVISION OF )  
ELECTIONS; )  
)  
Appellees, )  
v. )  
VOTE YES FOR ALASKA'S FAIR SHARE, )  
)  
Appellee and Cross-Appellant. )  
)

Trial Court Case No. 3AN-20-05901CI

THIRD JUDICIAL DISTRICT AT ANCHORAGE  
HONORABLE THOMAS A. MATTHEWS

**REPLY BRIEF OF CROSS-APPELLANT  
VOTE YES FOR ALASKA'S FAIR SHARE**

Filed in the Supreme Court of  
of the State of Alaska on August 12, 2020.

MEREDITH MONTGOMERY,  
Clerk of the Appellate Courts

By \_\_\_\_\_  
Deputy Clerk

Robin O. Brena, Esq. (8410089)  
Jack S. Wakeland, Esq. (0911066)  
Brena, Bell & Walker, P.C.  
810 N Street, Suite 100  
Anchorage, AK 99501  
(907) 258-2000 phone  
[rbrena@brenalaw.com](mailto:rbrena@brenalaw.com)  
[jwakeland@brenalaw.com](mailto:jwakeland@brenalaw.com)

## TABLE OF CONTENTS

INTRODUCTION .....	1
ARGUMENT .....	1
I. APPELLANTS’ OVERBROAD INTERPRETATION DOES NOT WITHSTAND THE SCRUTINY PROTECTING PETITION CIRCULATION.....	1
II. AS 15.45.110(c) SHOULD BE READ TO RESTRICT PER-SIGNATURE PAYMENT OF CIRCULATORS AND NOT OTHER COMPENSATION.....	9
A. The Plain Text of the Statute Does Not Ban Compensating Circulators by Salary and Cannot Practically Apply to Salary Compensation. ....	9
B. The Legislative History of the Statute Shows No Basis for Restricting Salaries for Circulators and, at a Minimum, Is Ambiguous as to Its Intended Scope.....	12
C. The Doctrine of Constitutional Avoidance Directs This Court to Fair Share’s Interpretation of a Statute’s Text. ....	14
D. Appellants Disregard This Court’s Clear Precedent and the Disenfranchisement Resulting from the Invalidity of Verified Signatures. ....	17
CONCLUSION .....	19

## TABLE OF AUTHORITIES

<b><u>Cases</u></b>	<b><u>Page</u></b>
<i>Meyer v. Grant</i> , 486 U.S. 414 (1988) .....	<i>passim</i>
<i>Nader v. Brewer</i> , 531 F.3d 1028 (9th Cir. 2008) .....	15
<i>North West Cruiseship Ass’n v. State</i> , 145 P.3d 573 (Alaska 2006) .....	8, 17

<b><u>Statutes</u></b>	
AS 15.45.030.....	4
AS 15.45.100.....	8
AS 15.45.110.....	<i>passim</i>
AS 15.45.130.....	4, 5
AS 15.45.140.....	4
AS 15.45.160.....	8
AS 15.56.040.....	8
AS 15.56.090.....	8

## AUTHORITIES PRINCIPALLY RELIED UPON

### **AS 15.45.110. Circulation of petition; prohibitions and penalty**

- (a) The petitions may be circulated throughout the state only in person.
- (b) Repealed by SLA 2000, ch. 82, § 92, eff. July 1, 2000.
- (c) A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.
- (d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.
- (e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.
- (f) In this section,
  - (1) "organization" has the meaning given in AS 11.81.900 ;
  - (2) "other valuable thing" has the meaning given in AS 15.56.030(d) ;
  - (3) "person" has the meaning given in AS 11.81.900.

## **INTRODUCTION**

Appellants seek to ban and criminalize tens of thousands of expressions of political speech by petition circulators and sponsors seeking political change, silence tens of thousands of Alaskans whose valid signatures were obtained in support of the petition to place the Fair Share Act on the ballot, and preemptively deny all Alaskans the right to vote on the Fair Share Act this November. Clearer examples of the denial of Alaskans' constitutional rights to engage in political speech would be hard to imagine.

To achieve these goals, Appellants must insist that the broadest interpretation of AS 15.45.110(c) possible is only interpretation possible. Appellants' interpretation criminalizes petition circulators and bans their right to engage in political speech if they are paid a salary when divided by the number of signatures they gather exceeds \$1. Vote Yes for Alaska's Fair Share ("Fair Share") disagrees that Appellants' interpretation of AS 15.45.110(c), which was adopted by the superior court, is only interpretation possible or that their interpretation is consistent with the plain language or legislative history much less the narrow interpretation directed by constitutional precedent when the broader interpretation severely restricts, bans, and criminalizes core political speech in Alaska.

## **ARGUMENT**

### **I. APPELLANTS' OVERBROAD INTERPRETATION DOES NOT WITHSTAND THE SCRUTINY PROTECTING PETITION CIRCULATION**

In seeking to deny tens of thousands of Alaskans their constitutional rights to advocate and engage in political change, Appellants seem unable to acknowledge that their efforts must withstand the constitutional scrutiny of this Court. The burden is not, as Appellants suggest, on Fair Share to demonstrate Alaskans have core constitutional rights to engage in

political speech, but, instead, the burden is on Appellants to demonstrate a valid state interest that has been narrowly drawn to justify the severe restriction, banning, and criminalization (“restrictions”) of core political speech that Appellants’ interpretation of AS 15.45.110(c) demands.

Viewed within the proper constitutional framework, the state simply has no constitutionally permissible interest that is met by severely restricting, banning and criminalizing petition circulators’ political speech simply because they were paid a fair salary for their work. And, even if the Appellants were able to conjure a constitutionally permissible state interest, certainly severely restricting, banning, and criminalizing circulators’ political speech is not the less intrusive means of achieving that state interest. As a result, Fair Share invites this Court to view Appellants’ broad interpretation of AS 15.45.110(c) within the context of the proper constitutional framework.

To begin, Appellants fail to advance a valid state interest that justifies any intrusion into the constitutional rights of Alaskans to engage in political speech. In fact, Appellants have been unable to articulate a valid state interest that has not been expressly rejected by the U.S. Supreme Court.<sup>1</sup> Appellants suggest the State’s “many valid interests” are to ensure the Fair Share Act petition has sufficient grass roots support and to ensure the integrity of the signature-gathering phase of the initiative process. In *Meyer v. Grant*,<sup>2</sup> however, the U.S. Supreme Court expressly rejected these interests as sufficient to prohibit the compensation of petition circulators:

---

<sup>1</sup> Cross-Appellees’ Brief at 22-24.

<sup>2</sup> *Meyer v. Grant*, 486 U.S. 414, 425-26 (1988).

We are not persuaded by the State’s arguments that the prohibition is justified by its interest in making sure that an initiative has sufficient grass roots support to be placed on the ballot, or by its interest in protecting the integrity of the initiative process. As the Court of Appeals correctly held, the former interest is adequately protected by the requirement that no initiative proposal may be placed on the ballot unless the required number of signatures has been obtained.

The State’s interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees’ ability to communicate their message in order to meet its concerns. The Attorney General has argued that the petition circulator has the duty to verify the authenticity of signatures on the petition and that compensation might provide the circulator with a temptation to disregard that duty. No evidence has been offered to support that speculation, however, and we are not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot.<sup>3</sup>

As in *Meyer*, grass roots support for the Fair Share Act petition is ensured through other far-less intrusive statutory provisions, is clear in this case, and has not seriously been put at issue in this appeal. As the *Meyer* court held, any state interest in ensuring grass roots support “is adequately protected by the requirement that no initiative proposal may be placed on the ballot unless the required number of signatures has been obtained.”<sup>4</sup> There is simply no constitutional justification for banning and criminalizing tens of thousands of exercises in political speech under Appellants’ tortured interpretations of AS 15.45.110(c) and AS 15.45.130 in order to protect the state’s interest in ensuring grass roots support.

In this case, any possible state interest in ensuring grass roots support has been “adequately protected” in a more direct fashion through multiple statutes and there is no

---

<sup>3</sup> *Meyer*, 486 U.S. at 425-26.

<sup>4</sup> *Id.*

possible constitutional justification for any intrusion, much less the massive intrusion Appellants seek, into the constitutional rights of petition circulators and sponsors to seek political change through protected political speech.

Illustrating this point through example may be helpful to this Court. AS 15.45.030(2) requires an application for the petition to include no less than 100 qualified voters who will serve as sponsors. The Fair Share Act application has 163 sponsors for the petition who are qualified voters. AS 15.45.140(a) requires signatures on the petition booklets to be by qualified voters only, and AS 15.45.140(a)(1) requires the petition be signed by 10 percent of those who voted in the preceding general election, which in this case was 28,501 signatures.<sup>5</sup> The Fair Share Act petition was supported by 39,174 qualified signatures,<sup>6</sup> considerably more signatures than required. AS 15.45.140(a)(2) requires the petition be signed by residents in at least three-fourths or 30 of the 40 house districts of the State. The Fair Share Act petition was supported by residents in all 40 house districts. AS 15.45.140(a)(3) requires at least seven percent of those who voted in the last election support the petition in three-fourths or 30 of the 40 house districts. The Fair Share Act petition was supported by at least seven percent who voted in the last election in 36 of the 40 house districts. AS 15.45.140(b) requires the signatures be gathered within a one-year period. The Fair Share Act petition was supported by 39,174 signatures gathered within three months during the heart of one of the coldest winters in Alaska. Clearly, it is the presence of grass roots support, not the lack of it, that has driven Appellants to file a meritless

---

<sup>5</sup> <https://www.elections.alaska.gov/petitions/19OGTX/19OGTX-PetSumReportFINAL.pdf>

<sup>6</sup> *Id.*



legal action. As in *Meyer*, under the facts of this case, there may be no credible argument that the intrusions into free speech Appellants seek to justify are compelled by any possible state interest in ensuring grass roots support for the petition.

As in *Meyer*, the integrity of the signature process for the Fair Share Act petition is also ensured through other more direct and far-less intrusive statutory provisions, is clear in this case, and has not seriously been put at issue in this appeal. As the *Meyer* court held, the “State’s interest in protecting the integrity of the initiative process does not justify the prohibition because the State has failed to demonstrate that it is necessary to burden appellees’ ability to communicate their message in order to meet its concerns.”<sup>7</sup> Again, there is simply no constitutional justification for banning and criminalizing tens of thousands of exercises in political speech under Appellants’ tortured interpretations of AS 15.45.110(c) and AS 15.45.130 in order to protect the state’s interest in ensuring the integrity of signature-gathering in this case.

In fact, Appellants are unable to articulate how the integrity of signature gathering is threatened by paying petition circulators a fair salary. Apparently, Appellants believe that petition circulators paid a higher salary undermine the integrity of signature gathering while petition circulators paid a lesser salary ensures the integrity of signature gathering. While they may believe that to be the case, they have neither offered allegations nor logic to explain why petition circulators being paid a fair salary puts at risk the integrity of the signature-gathering process in Alaska.

---

<sup>7</sup> *Meyer*, 486 U.S. at 426.

Importantly to this case, Appellants have not alleged a single example in which the integrity of the signature-gathering process was put at risk in the first instance. Appellants have not alleged that a single signature verified by the lieutenant governor as valid is not, in fact, a valid signature by a qualified Alaskan voter. Appellants have not alleged a single Alaskan voter was provided misinformation, nor have they alleged a single Alaskan voter was not provided the information required by law. Appellants have not alleged a single petition circulator was inappropriate in gesture or comment, untruthful, or misleading when communicating with a single Alaskan voter. Similarly, Appellants have not alleged a single petition circulator pressured a single Alaskan voter into signing the petition in order to capture a “bounty” for the signature. In fact, Appellants concede there was no “bounty” to be captured in this case because every petition circulator was paid a salary and did not receive more compensation for gathering more signatures nor less compensation for gathering less signatures. There is not a single alleged fact that supports the suggestion that the petition circulators’ salary compromised the integrity of the signature-gathering process sufficiently to compel and justify a massive intrusion into the constitutional rights of Alaskans to seek political change through protected political speech. In fact, Appellants have not even offered a logical nexus between the integrity of the signature-gathering process and the petition circulators’ salaries.

Similar to Appellants’ position before this Court, the State in *Meyer* unsuccessfully argued the petition circulator’s compensation may undercut the integrity of the signature gathering by tempting the circulator to be less mindful of “the duty to verify the authenticity

of signatures on the petition.”<sup>8</sup> In response to this argument, the *Meyer* court held, “[n]o evidence has been offered to support that speculation, however, and we are not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer . . . .”<sup>9</sup> The same is true in this case. Appellants have not alleged facts necessary to demonstrate a state interest in ensuring the integrity of the signature gathering is at risk as the result of the salaries paid to petition circulators.

Moreover, as is also true in Alaska, the *Meyer* court held the state’s interest in ensuring fewer “false signatures” were accepted by paid petition circulators was more directly met with no intrusion into the constitutional rights of free speech through other Colorado statutes.<sup>10</sup> The *Meyer* court observed that “[o]ther provisions of the Colorado statute deal expressly with the potential danger that circulators might be tempted to pad their petitions with false signatures.”<sup>11</sup> The safeguards noted by the *Meyer* court are similar to the safeguards this Court has noted under Alaska law. Specifically, this Court in *North West Cruiseship* noted:

We further note that the petition booklets were prepared with several safeguards, including (1) a warning that anyone who signs the petition knowing that he or she is not a qualified voter is guilty of a misdemeanor; (2) directions to the petition circulators that each subscriber must be a registered Alaskan voter; and (3) a certification affidavit from the petition circulator attesting, under penalty of perjury, that the signatures in each petition booklet were drawn from persons “who were qualified voters on the date of the signature.” The training materials provided to petition circulators

---

<sup>8</sup> *Meyer*, 486 U.S. at 426.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 427.

<sup>11</sup> *Id.* at 426-27.

also emphasized that the subscribers must be registered voters. Given these additional safeguards, we conclude that the 1,202 signatures were properly counted.<sup>12</sup>

Aside from the safeguards noted by this Court in *North West Cruiseship*, AS 15.45.110(e) that provides it is a class B misdemeanor to knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition. AS 15.45.100 provides each petition shall include a statement of warning that a person who signs a name other than the person's own on the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter, is a guilty of a class B misdemeanor. AS 15.56.090 provides it is a class B misdemeanor to sign a name other than the person's own on the petition, or knowingly signs more than once for the same proposition at one election, or sign the petition when knowingly not a qualified voter, or solicit, accept, or agree to accept money or other valuable thing in exchange for signing or refraining from signing a petition. AS 15.56.040(a)(3) & (b) provide it is a class C felony to intentionally make a false affidavit, swear falsely, or falsely affirm under an oath required by Title 15. The final check on the integrity of the signature-gathering process is the lieutenant governor's obligation to verify each signature on the petition is by a qualified subscriber and to deny certification to any petition upon which there is an insufficient number of qualified subscribers under AS 15.45.160(1)-(3).

Given these direct and thorough protections to ensure the signature-gathering phase of an initiative results in valid signatures, it is hard to imagine that the petition circulators'

---

<sup>12</sup> *North West Cruiseship*, 145 P.3d at 576-77.

salary level plays any role in ensuring the validity of the signatures being gathered. The *Meyer* court found far-less comprehensive provisions than exist in Alaska “seem adequate to the task of minimizing the risk of improper conduct in the circulation of a petition, especially since the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting.”<sup>13</sup>

Under the constitutional standards of *Meyer*, Appellants have simply failed completely to identify or support a valid state interest for which the severe restriction, banning, and criminalization of core political speech in Alaska may be justified. While this statement of constitutional law may lose some force were the petition circulators’ compensation based solely upon the number of signatures gathered, it loses none of its force when applied to petition circulators’ compensation based on salary, as advocated by Appellants. This is not a case in which a potential state interest in minimizing “bounty hunting” under “per-signature” compensation is at issue because none of the petition circulators at issue were paid based on the number of signatures gathered. No court or state since *Meyer* has determined that restricting the political speech rights of petition circulators by limiting their right to be paid a salary serves any state interest or is a justified intrusion into political speech.

## **II. AS 15.45.110(c) SHOULD BE READ TO RESTRICT PER-SIGNATURE PAYMENT OF CIRCULATORS AND NOT OTHER COMPENSATION**

### **A. The Plain Text of the Statute Does Not Ban Compensating Circulators by Salary and Cannot Practically Apply to Salary Compensation.**

AS 15.45.110(c) states: “A circulator may not receive payment or agree to receive payment that is greater than \$1 a signature, and a person or an organization may not pay or

---

<sup>13</sup> *Meyer*, 486 U.S. at 427.

agree to pay an amount that is greater than \$1 a signature, for the collection of signatures on a petition.” The statute addresses per-signature compensation of petition circulators with no mention of hourly or salary compensation, or any indication how the “\$1 a signature” limitation would or could apply to hourly or salary compensation. Nonetheless, the superior court accepted Appellants’ position that if a circulator “received [a salaried] payment that ended up being greater than \$1 per signature, no matter how it was received, it seems the statute would prohibit it.”<sup>14</sup> The plain text does not require such a reading, particularly in light of the obvious practical problems with such a reading.

As a preliminary matter, the “\$1 a signature limit” simply has no theoretical nor practical way to be interpreted to apply to a salary. Campaign staff for any initiative are often paid a salary to do the multiple tasks necessary to advance an initiative campaign forward which may include gathering signatures. Appellants’ interpretation would restrict, ban, and criminalize the campaign staff paid a salary from engaging in political speech and gathering signatures simply because their salary divided by the number of signatures they gathered that month exceeded \$1. Similarly, petition circulators, such as at issue in this case, also do multiple tasks for which they are compensated through salary other than directly gathering signatures. They verify signatures, coordinate with the initiative campaign staff, travel to or throughout Alaska, etc., all of which are compensated under their salary. For that matter, the campaign staff and petition circulators are entitled to receive their entire monthly salary regardless of the number of signatures gathered—i.e., they are entitled to the

---

<sup>14</sup> Order at 9. [Exc. 235]

identical monthly salary whether they gather no signatures that month or 1,000 signatures that month.

Given Appellants' interpretation of AS 15.45.110(c), even assuming the \$1-per-signature restriction could somehow be limited to only signature-gathering activities for salaried petition circulators, there is no possible way to determine whether petition circulators have committed a crime for which they may be fined and jailed until they turn in their signatures at the end of each month. If a petition circulator is paid \$5,000 per month and yet is only able to gather 4,999 signatures, then Appellants' interpretation of AS 15.45.110(c) would criminalize her signature gathering. On the other hand, if the next month, she was able to gather 5,000 signatures, then Appellants' interpretation would not criminalize her signature gathering.

It would be hard to imagine an interpretation more at odds with ensuring the integrity of the signature-gathering process than one that would subject salaried petition circulators to criminal sanctions unless they made their quota each month. It would also be hard to imagine an interpretation more at odds with common sense than one that would not permit salaried petition circulators to know if they were engaged in criminal activity throughout the month until they counted the signatures they gathered at the end of the month and divided their salary by the number of signatures to see if it was greater or less than \$1. Heaven forbid a petition circulator becoming sick for part of a month while receiving a salary. Finally, it would be hard to imagine an interpretation that would be more intrusive to the rights of petition circulators to engage in political speech. The point is, Appellants' interpretation

applying the \$1 a signature restriction to salaried petition circulators leads to ridiculous, impractical, and unconstitutional outcomes.

The impractical and untenable reality of this broad interpretation of AS 15.45.110(c) is relevant to its reasonable interpretation. Applying a \$1-per-signature limit to a salary is simply unworkable, as either the person must commit to and actually achieve the collection of an exact number of signatures to receive payment, or the compensation must be delayed or retroactively adjusted once the number of collected signatures is known, with a misdemeanor hanging over the heads of all involved if something goes wrong. Not only is there no compelling or even legitimate interest in restricting the salaries of circulators to the number of signatures they collect, but doing so actually counters the only arguably legitimate state interest advanced by the Legislature in desiring to mitigate “bounty hunting” as stated by Senator Sharp,<sup>15</sup> as discussed below.

**B. The Legislative History of the Statute Shows No Basis for Restricting Salaries for Circulators and, at a Minimum, Is Ambiguous as to Its Intended Scope.**

Appellants prefer to focus on a 2009 bill that did not pass rather than address the discussion of legislators who enacted the statute in 1998. In reducing Senator Sharp’s ban on per-signature compensation to the \$1 limitation, some representatives expressed indefinite concerns about how hourly compensation might implicate payroll and workman’s comp issues, while others questioned the policy goals of the change and underscored the constitutional concerns with limiting amounts rather than means of compensation

---

<sup>15</sup> Senate Judiciary Committee meeting (March 18, 1998) at Tr. 20:16-21:11. [Exc. 101]



generally.<sup>16</sup> The superior court concluded that “the legislature attempted to get as close as possible to prohibiting payment to petition circulators, mindful of *Meyer*.”<sup>17</sup> But no legislator expressed an intention to prohibit salary compensation for circulators, or even mentioned salary compensation for circulators.

Furthermore, placing all circulators under a restriction that requires them to collect signatures to increase the amount they may be paid is entirely contrary to the Legislature’s expressed concerns with the “bounty hunting” incentives that prompted the legislation in the first place.<sup>18</sup> This policy basis of reducing the incentives around per-signature compensation was echoed by representatives in the House,<sup>19</sup> with the only mentions of other compensation being concerns about how hourly compensation would interact with the amended limit of \$1-per-signature in terms of payroll and workers’ comp, and no mention of salary compensation or any intended effect upon it.<sup>20</sup> Eliminating the qualifier that removed other compensation from the original ban hardly necessitates the superior court’s interpretation that all other compensation is now subject to the per-signature limit, and there was no expression or discussion of intent to that effect. And as Fair Share has repeatedly stated, effectively converting all circulator compensation to per-signature compensation—making the amount of the compensation dependent on how many signatures they collect, regardless of how their compensation is structured—actually forces circulators into the very incentives the Legislature intended to reduce with the statute.

---

<sup>16</sup> Brief of Cross-Appellant at 11-14.

<sup>17</sup> Order at 11. [Exc. 237]

<sup>18</sup> Senate Judiciary Committee meeting (March 18, 1998) at Tr. 20:16-21:11. [Exc. 101]

<sup>19</sup> House Finance Committee meeting (March 8, 1998) at Tr. 76:15-77:5. [Exc. 104]

<sup>20</sup> Brief of Cross-Appellant at 12-13.

In accepting Appellants’ overbroad interpretation of AS 15.45.110(c), the superior court erred by ignoring the sole policy basis the Legislature articulated in enacting this law. If nothing else, the various statements of the representatives create ambiguity around the intended effect of the provisions they ultimately passed, and make Fair Share’s interpretation at least as plausible as that accepted by the superior court. The analysis then turns to the requirements of the doctrine of constitutional avoidance.

**C. The Doctrine of Constitutional Avoidance Directs This Court to Fair Share’s Interpretation of a Statute’s Text.**

Fair Share agrees that if the superior court’s interpretation of AS 15.45.110(c) is affirmed, the statute is unconstitutional. But Fair Share cross-appealed because the superior court failed to narrowly construe AS 15.45.110(c) to avoid unconstitutional infringements on the rights of citizens to engage in direct democracy and political speech. Even if the superior court’s reading were plausible, Fair Share’s alternate interpretation that the “\$1 a signature” restriction may only reasonably be read to restrict “per-signature” compensation is also plausible in light of the plain text and legislative history. Thus, constitutional avoidance supports Fair Share’s interpretation to save the statute.<sup>21</sup>

Appellants have failed to show any case since *Meyer* where the salaries of circulators were permitted to be restricted as Appellants seek to do here. Unable to allege, let alone prove, any problem with the verified signatures in this case, Appellants seek to use the superior court’s conclusion to somehow fault Fair Share for not presenting a full evidentiary record on the constitutional impacts of Appellants’ statutory interpretation. Appellants are

---

<sup>21</sup> Brief of Cross-Appellant at 14-18.

the ones seeking to severely restrict, ban, and criminalize core political speech in Alaska without having alleged the facts necessary for their position to survive constitutional scrutiny by this Court. Constitutional precedent requires restrictions to core political speech to be justified not for core political speech to be justified. Restriction of core political speech is restriction of core political speech. No further evidence is required beyond the tens of thousands of acts of core political speech engaged in by circulators that Appellants agree would not have happened if Appellants' interpretation were in effect.<sup>22</sup>

Appellants engage in rhetorical contortions to argue that the clear line of precedent following *Meyer* actually supports their desired infringement on political speech,<sup>23</sup> but they do not and cannot deny that the activities of political circulators are “core political speech” for which constitutional protection is “at its zenith” in applying strict scrutiny to restrictions thereon.<sup>24</sup> In the wake of their failure before the superior court, Appellants have repeatedly declared that Fair Share failed to provide evidence of the constitutional impacts of their extreme statutory interpretation,<sup>25</sup> as if Fair Share actually shared their interpretation and had brought this expedited litigation to challenge it. On the contrary, Fair Share believes Appellants' interpretation is absurd and was only accepted by the superior court for the

---

<sup>22</sup> Opposition to Defendant Vote Yes for Alaska's Fair Share's Motion to Dismiss and Cross-Motion for Partial Summary Judgment at 19 (“It is unlikely professionally paid circulators from Advanced Micro Targeting would be travelled to Alaska to gather subscriptions had [they been] compensated circulators \$1 or less for every signature gathered.”). [Exc. 136]

<sup>23</sup> Cross-Appellees' Brief at 26-29.

<sup>24</sup> *Nader v. Brewer*, 531 F.3d 1028, 1035 (9th Cir. 2008); *Meyer*, 486 U.S. at 421-22. The courts in *Jaeger* and *Prete* only upheld restrictions on per-signature compensation because they did not affect other compensation. Brief of Cross-Appellant at 17-18.

<sup>25</sup> Cross-Appellees' Brief at 29.

purpose of striking it down. Regardless, this Court need look no further for the constitutional impact of Appellants' desired infringement on political speech than the tens of thousands of instances of political speech engaged in by the circulators in question, and Appellants' admission that those instances would have been prevented by the application of their absurd interpretation.<sup>26</sup> Fair Share need not presume the unconstitutionality of Appellants' interpretation when it is so plain in the light of clear precedent.

Appellants' effort to expand a per-signature restriction to all compensation of petition circulators is akin to the complete ban on compensation that the *Meyer* court held to a "well-nigh insurmountable" burden.<sup>27</sup> This is particularly true when neither the Legislature nor Appellants offered any evidence supporting the stated interest in preventing fraud, of which the *Meyer* court expressed skepticism.<sup>28</sup> Even assuming a legitimate basis for restricting free speech, the restriction may only survive constitutional scrutiny if the restriction is narrowly tailored to serve that specific interest. There simply is no legitimate state interest and none has been articulated by the Appellants or by any court since *Meyer* in restricting compensation for petition circulators other than per-signature compensation. Accordingly, the application of the per-signature restriction in AS 15.45.110(c) to all forms of compensation is not in service of any legitimate state interest, is not narrowly drawn, and cannot survive constitutional scrutiny. The superior court was correct in so holding, but should have applied the doctrine of constitutional avoidance to save the statute.

---

<sup>26</sup> See n.22 *supra*.

<sup>27</sup> *Meyer*, 486 U.S. at 425.

<sup>28</sup> *Id.* at 425-26.

**D. Appellants Disregard This Court's Clear Precedent and the Disenfranchisement Resulting from the Invalidity of Verified Signatures.**

In addition to broadly denigrating the compensation of petition circulators regardless of its clear constitutional protection, Appellants here also reiterate their disdain for the constitutional right of Alaskans to the initiative process in dismissing any notion of disenfranchisement, once again pointing to various inapposite decisions from other states while dismissing this Court's clear precedent as "unfortunate dicta."<sup>29</sup> Appellants flatly misstate Alaska law when they declare "the invalidation of signatures on a petition does not disenfranchise voters."<sup>30</sup> In *North West Cruiseship*, this Court expressly held that voters signing initiative petitions "have a right to participate in the initiative process and should not be disenfranchised because of the error of a circulator that had no impact upon them. This Court . . . should avoid an interpretation that requires a broader remedy that disenfranchises voters who did nothing wrong."<sup>31</sup> No matter how many times Appellants ignore this precedent and label its principle as "erroneous rhetoric,"<sup>32</sup> they cannot escape it any more than the industry-coalition in *North West Cruiseship* and should reap the same result.

Appellants also seek to persuade this Court that they are engaged in this meritless legal action not at the behest of the major producers that will pay Alaskans less than a fair share for our if Appellants are successful, but to preserve the integrity of the initiative process for the working men and women of Alaska.<sup>33</sup> One should not be heard to praise the fruit as he

---

<sup>29</sup> Cross-Appellees' Brief at 29-31.

<sup>30</sup> *Id.* at 30.

<sup>31</sup> *North West Cruiseship Ass'n v. State*, 145 P.3d 573, 587 (Alaska 2006) (emphasis added).

<sup>32</sup> Cross-Appellees' Brief at 29.

<sup>33</sup> Cross-Appellees' Brief at 4-5.

cuts down the tree. The working men and women of Alaska are not better off when Alaskans are paid less than a fair share for our oil. Alaska's oil wealth is being taken from her. Senate Bill 21 which the initiative seeks to amend was the largest oil resource give away in Alaska's history, and has resulted in Alaskans paying more in credits to the producers than the producers have paid in production taxes for the past five fiscal years.<sup>34</sup> That Appellants have even brought this meritless legal action is a testament to the political influence of a few major oil producers and clearly illustrates the reason the Fair Share Act became necessary.

Appellants also seek to change day to night in suggesting they are protecting Alaskans from the big money interests. Appellants' efforts are being funded almost entirely by Exxon, ConocoPhillips, BP, and Hilcorp who are Texas-based major producers. These major international oil companies have funded tens of millions of dollars in political efforts to pass Senate Bill 21, to avoid the repeal of Senate Bill 21, and to defeat the Fair Share Act through meritless legal action and a multi-million-dollar media campaign. Appellants' efforts are bought and paid for by these major international oil companies, and to suggest otherwise is disingenuous. To be frank, suggesting anyone supporting Fair Share represents an improper big money influence in the context of this case is simply laughable. Fair Share has been supported by over 400 individual Alaskans and no large out-of-state companies.

Finally, Appellants seek to minimize the impact of their positions on the initiative process in Alaska. Restricting signature gathering to roughly \$30,000 (the number of signatures required to place an initiative on the ballot times \$1) when Exxon, BP, ConocoPhillips, and Hilcorp are free to spend tens of millions of dollars in support for Senate

---

<sup>34</sup> <http://tax.alaska.gov/programs/documentviewer/viewer.aspx?1573r>, (Appendix 3A) at 89.

Bill 21, to avoid its repeal, and in opposition to the Fair Share Act erodes the very purpose of the initiative process in Alaska. The last three initiatives in Alaska have all paid petition circulators salaries that are ten to twenty times greater than Appellants' interpretation of AS 15.45.110(c) would allow. According to the APOC, Better Elections paid Advanced Micro Targeting \$315,000 and gathered 40,826 signatures of which 36,006 were qualified.<sup>35</sup> Similarly, Stand for Salmon paid Advanced Micro Targeting \$72,950<sup>36</sup> and Scott Kohlhaus \$100,500<sup>37</sup> and gathered 47,000 signatures of which 41,999 were qualified.<sup>38</sup> This Court should make no mistake about the implications of Appellants' positions, which will gut any meaningful initiative process in Alaska.

### **CONCLUSION**

This Court should not adopt an interpretation of AS 15.45.110(c) that severely restricts, bans, and criminalizes tens of thousands of expressions of political speech by petition circulators seeking political change, silence tens of thousands of Alaskans whose valid signatures were obtained in support of the petition to place the Fair Share Act on the ballot, and preemptively denies all Alaskans the right to vote on the Fair Share Act this November, simply because petition circulators were paid a salary that when divided by the number of signatures gathered exceed \$1. Fair Share agrees with the superior court that such

---

<sup>35</sup> <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=29902&ViewType=CD>

<sup>36</sup> <http://www.elections.alaska.gov/petitions/19AKBE/19AKBE-PetSumReportFINAL.pdf>

<sup>37</sup> <https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=20716&ViewType=CD>;  
<https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=21883&ViewType=CD>

<sup>38</sup> <https://www.elections.alaska.gov/petitions/17FSH2/17FSH2%20FINAL%20Petition%20Summary%20Report.pdf>

a reading does not survive the “exacting scrutiny” applied by *Meyer*,<sup>39</sup> but disagrees with the superior court that such a reading is the only one possible.

In Fair Share’s interpretation, the statute plainly applies to per-signature compensation and nothing more. The legislative history does not reveal any stated intention or policy rationale for expanding the \$1-a-signature limit to the salaries at issue in this case would such an expansion be consistent with the legislative history or constitutional precedent. As a result, this Court may properly invoke the doctrine of constitutional avoidance to save the statute.

Fair Share considers Appellants’ case a meritless legal action which is part of the multi-million-dollar effort by Exxon, BP, ConocoPhillips, and Hilcorp to thwart the Fair Share Act through their use of surrogates. Fair Share respectfully requests this Court carefully consider the impacts to the initiative process from Appellants’ contrived legal theories and efforts to undercut the initiative process in Alaska. This Court’s firmness, clarity, and vigilant protection of the initiative is necessary here and in the future for Alaskans to meaningfully exercise their constitutional right to advance significant political change through direct democracy and the initiative process.

DATED this 12<sup>th</sup> day of August, 2020.

---

<sup>39</sup> *Meyer*, 486 U.S. at 420 (citing *Buckley*, 424 U.S. at 45).



BRENA, BELL & WALKER, P.C.  
Counsel for Vote Yes for Alaska's Fair Share

By //s// Robin O. Brena  
Robin O. Brena, AK Bar No. 8410089  
Jon S. Wakeland, AK Bar No. 0911066  
810 N Street, Suite 100  
Anchorage, Alaska 99501  
Phone: (907) 258.2000  
Facsimile: (907) 258.2001  
rbrena@brenalaw.com  
jwakeland@brenalaw.com